

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

DELLAPINO BALLARD,

Plaintiff,

-v.-

1:06-CV-1285
(GLS)(DRH)

ST. PETER'S RECOVERY CENTER,

Defendant.

APPEARANCES:

DELLAPINO BALLARD
05-R-2261
Plaintiff, *pro se*

GARY L. SHARPE, United States District Judge

DECISION and ORDER

Presently before the Court is an amended complaint filed by plaintiff Dellapino Ballard. Dkt. No. 10. This amended complaint was submitted by Ballard in compliance with the Decision and Order issued by this Court on November 30, 2006 ("November Order"). Dkt. No. 8. For the reasons discussed below, the Court finds that the amended complaint fails to state a claim against the defendant upon which relief may be granted and, therefore, dismisses this action.

In the November Order, the Court advised Ballard that state action is an essential element of any 42 U.S.C. § 1983 claim and that the sole defendant in Ballard's original complaint appeared to be a private hospital. *Id.* at 3. Ballard was further advised that it is the duty of the plaintiff to allege state action on the part of the defendants named in a complaint. *Id.* at 4.

A review of Ballard's amended complaint reveals that it fails to comply with the November Order. Ballard continues to name St. Peter's Recovery Center as the sole defendant in this action. Dkt. No. 10 at 1. Ballard does not allege state action on the part of this defendant. The only additional information provided by Ballard in his amended complaint is a description of the Center's staff members who were present when the alleged violation occurred. *Id.* Ballard does not name these individuals as defendants, nor does he allege state action on the part of these individuals.

In light of the foregoing and for the reasons set forth in the November Order, the Court finds that Ballard's amended complaint fails to state a claim upon which relief may be granted. The Court hereby dismisses this action.

WHEREFORE, it is hereby

ORDERED, that this action is **dismissed**, and it is further

ORDERED, that the Clerk serve a copy of this Order on Ballard by

regular mail.

IT IS SO ORDERED.

January 29, 2007
Albany, New York


United States District Court Judge